

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DENNIS B. McGUIRE,

Petitioner, :

Case No. 3:12-cv-310

- vs -

Chief Judge Susan J. Dlott
Magistrate Judge Michael R. Merz

NORMAN ROBINSON, Warden,

Respondent. :

REPORT AND RECOMMENDATIONS

This case is before the Court on Petitioner's second Petition for Writ of Habeas Corpus (Doc. No. 2). McGuire brought this case to challenge the method of execution employed by the State of Ohio as designated in the Department of Rehabilitation and Correction ("DRC") Policy 01-COM-11.¹ *Id.* Respondent filed an Answer on December 5, 2012, and Petitioner filed a Reply on February 15, 2013. (Doc. Nos. 6, 11.) The Reply was the last filing in this case.

On November, 14, 2011, McGuire, along with several other prisoners, filed a complaint under 42 U.S.C. § 1983 claiming that their executions by lethal injection will violate their constitutional rights. *See In Re Ohio Execution Protocol Litigation*, Case No. 2:11-cv-1016; Complaint, Doc. No. 4. In the *Execution Protocol* case, Judge Frost of this Court heard and

¹ Adopted September 18, 2011. The Plan as written at the time of McGuire's Petition provided for a primary ("Plan A") method of execution which involved an intravenous injection of pentobarbital and a secondary course of action ("Plan B") which involved an intramuscular injection of hydromorphone and midazolam. Effective October 10, 2013, DRC Policy COM-11 was amended, superseding the prior 2011 version, to provide for execution through the "Plan A" and "Plan B" model. In the event a sufficient quantity of pentobarbital is not available, the Drug Administrator should proceed to intravenous administration of midazolam and hydromorphone. http://www.drc.ohio.gov/web/drc_policies/drc_policies.htm

rejected a motion for preliminary injunction. *In re Ohio Execution Protocol Litigation* (McGuire), 2014 U.S. Dist. LEXIS 3800 (Jan. 13, 2014).

On January 16, 2014, the sentence against McGuire was carried out by the State of Ohio.

It is therefore recommended that this case be dismissed with prejudice as moot.

January 17, 2014.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).